

REMARKS

This responds to the Office Action mailed on May 20, 2003.

Claims 1, 3, 6 and 16 are amended, no claims are canceled or added; as a result, claims 1-4 and 6-25 remain now pending in this application. The amendments to the claims clarify and more particularly define what Applicant considers to be the claimed invention.

Examiner Interview Summary

Applicant thanks the Examiner for the courtesies extended during the telephone interview conducted on May 4, 2004. The current claims and cited references were discussed during the interview. No agreement regarding the claims was reached.

§102 Rejection of the Claims

Claims 1-4, 6, 10, 14-19 and 21-25 were rejected under 35 USC § 102(e) as being anticipated by Ho et al. (U.S. 6,120,300). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicant respectfully submits that Ho does not anticipate the pending claims for the reasons discussed below.

Claim 1 as amended recites “storing predetermined goal data for each of a plurality of participants, the goal data including at least one minimum threshold level of performance selected by a participant from a plurality of performance levels provided by a program sponsor.” Applicant has reviewed Ho and can find no teaching or disclosure of each participant of a plurality of participants selecting a goal from a plurality of available goals. Ho merely discloses that a student can select a reward or defer a reward (see e.g. column 13, lines 24-48). Ho does

not teach that a participant can select a performance level from available performance levels. As a result, Ho does not teach or disclose each element of the claimed invention. Applicant respectfully requests the withdrawal of the rejection of claim 1.

Claims 2-4, 6, 10, 14-19 and 21-25 each depend either directly or indirectly from claim 1, and therefore inherit the elements of claim 1 in addition to adding further patentable distinctions. Claims 2-4, 6, 10, 14-19 and 21-25 are therefore allowable for at least the same reasons as discussed above with respect to independent claim 1.

Additionally, claim 3 as amended recites dividing the plurality of participants into a number of different segments, where the performance levels differ between the segments. Applicant has reviewed Ho and can find no teaching or disclosure of the elements recited in claim 3. Applicant respectfully requests the withdrawal of the rejection of claim 3.

Also, claim 16 as amended recites “setting the predetermined goal data by modifying previous predetermined goal data based on past performance data.” Claim 24 recites similar language with respect to a participant. Applicant has reviewed Ho and can find no teaching of the recited element. Ho states that a participant can provide feedback on a particular reward (see e.g. column 14, lines 14-16). However, Ho specifically states that it is the reward that is modified, not the goal or performance level. As a result, Ho does not teach each and every element of claims 16 and 24. Applicant respectfully requests the withdrawal of the rejection of claims 16 and 24.

§103 Rejection of the Claims

Claims 1-4 and 6-25 were rejected under 35 USC § 103(a) as being unpatentable over Ho et al. in view of Noori et al. (“Production and Operations Management, Total Quality and Responsiveness”, McGraw-Hill, Inc.). In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in

the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that the cited references do not teach each and every element of Applicant's claims.

For example, claim 1 recites "storing predetermined goal data for each of a plurality of participants, the goal data including at least one minimum threshold level of performance selected by a participant from a plurality of performance levels provided by a program sponsor." As discussed above, Ho fails to teach or disclose the recited language. In addition, Applicant has reviewed Noori and can find no reference to self-selection (e.g. by a participant) of a performance level from a plurality of performance levels provided by a program sponsor. As a result, neither Ho nor Noori teach or disclose each and every element of claim 1.

With respect to self-selection of performance levels, the Office Action states that it is old and well known in the art of personal motivation for individuals to establish their own goals and reward themselves. Applicant notes that this is different from claim 1 as amended in which a participant selects from plurality of performance levels and rewards provided by a program sponsor, and does not establish themselves the plurality of performance levels or rewards.

In view of the above, Applicant respectfully submits that the cited references fail to teach each and every element of Applicant's claim 1, and requests the withdrawal of the rejection of claim 1.

Claims 2-4 and 6-25 depend either directly or indirectly from claim 1. These dependent claims are therefore non-obvious for the same reasons as discussed above with respect to claim 1.

Further, with respect to claim 3, as noted above Ho fails to teach dividing the plurality of participants into at least a first and second segment and providing differing performance level options to each segment. Applicant has reviewed the cited portion of Noori and can find no teaching or disclosure of the recited elements of claim 3. As a result, the combination of Ho and Noori fails to teach each and every element of claim 3. Therefore Applicant respectfully submits that claim 3 is non-obvious and requests the withdrawal of the rejection of claim 3.

With respect to claims 8, 12 and 13, Applicant can find no teaching in either Ho or Noori of goal data comprising a measure of safety compliance, number of displays installed, or number of demonstrations conducted.



AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 AND EXAMINER INTERVIEW SUMMARY

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Dkt: 494.004US1

Additionally with respect to claims 16 and 24, as argued above Ho does not teach or disclose "setting the predetermined goal data by modifying previous predetermined goal data based on past performance data." Additionally Applicant has reviewed the cited section of Noori and can find no teaching of the elements recited in claims 16 and 24. Therefore the combination of Ho and Noori fails to teach each and every element of Applicant's claims 16 and 24. Applicant respectfully submits that claims 16 and 24 are non-obvious and requests the withdrawal of the rejection of claims 16 and 24.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 20th day of May, 2004.